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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:04-CR-148 JCM (LRL)

8 Plaintiff(s),

ORDER

9 v.

10 JEFFREY MICHAEL DONNELLY,

11 Defendant(s).

12
13 Presently before the court is defendant Jeffrey Michael Donnelly's "motion for order
14 stating whether court would entertain or grant motion for relief from order denying motion to
15 vacate." (ECF No. 52). Donnelly has requested "expedited treatment" of this motion.

16 On December 22, 2004, Donnelly pleaded guilty (without a plea agreement) to one count
17 of felon in possession of a firearm under 18 U.S.C. § 922(g)(1). (ECF No. 27). The PSR calculated
18 his guideline range as 188 to 235 months and recommended a sentence of 235 months. (PSR at
19 85, 98).

20 On April 7, 2005, the court sentenced Donnelly to 188 months in custody (low end of the
21 guideline range), followed by five (5) years supervised release. (ECF No. 34). He was advised of
22 his rights to file an appeal. (ECF No. 34). The court entered judgment on April 18, 2005. (ECF
23 No. 36).

24 On June 7, 2016, Donnelly moved to vacate the sentencing enhancement applied to his
25 sentence pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015), and requested that the court
26 resentence him to 57 months. (ECF No. 42). On April 11, 2017, this court denied the motion.
27 (ECF No. 48). This court ruled that Donnelly's "prior three felony convictions—aggravated
28 assault, robbery, and armed robbery—are 'violent felonies' within the definition set forth under

1 the force clause of the ACCA, without resort to the ACCA’s residual clause. . . . Therefore,
2 *Johnson* is inapplicable to the instant case.” *Id.* at 4.

3 The instant motion (ECF No. 52) is barely two pages long and simply asks the court to
4 offer an advisory opinion on whether, hypothetically, if Donnelly were to file a motion for relief
5 from this court’s previous order (ECF No. 48), the court would entertain the motion. Donnelly
6 indicates that he would like to move for relief because the Ninth Circuit recently issued an opinion
7 in *United States v. Geozos*, No. 17-35018, 2017 WL 3712155 (9th Cir. Aug. 29, 2017), which
8 Donnelly states is contrary to this court’s prior holding on the same issues discussed in *Geozos*.
9 (ECF No. 52).

10 However, the instant motion does not actually move for relief from this court’s judgment,
11 but instead simply asks this court to opine on whether it would entertain such a motion *if* Donnelly
12 decides to so move. In other words, the order does not actually request any specific relief from
13 this court except for a declaration of this court’s legal opinion on what the court would do about a
14 motion Donnelly has not yet filed. Thus, in essence, Donnelly requests this court to issue an
15 advisory opinion, which Article III prohibits. *See, e.g., Calderon v. Ashmus*, 523 U.S. 740, 745–
16 46 (1998). Specifically, the United States Supreme Court has held, in relevant part, as follows:

17 [T]he Article III prohibition against advisory opinions reflects the complementary
18 constitutional considerations expressed by the justiciability doctrine: Federal
19 judicial power is limited to those disputes which confine federal courts to a rule
20 consistent with a system of separated powers and which are traditionally thought to
21 be capable of resolution through the judicial process.

22 *Flast v. Cohen*, 392 U.S. 83, 97 (1968).

23 Therefore, the motion must be denied. To be clear, this order does not answer Donnelly’s
24 question in the affirmative or negative—it does not answer the question at all—because to do so
25 here would violate Article III of the United States Constitution.

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Accordingly,

IT IS HEREBY ORDERED that Donnelly’s “motion for order stating whether court would entertain or grant motion for relief from order denying motion to vacate” (ECF No. 52) is DENIED.

DATED September 11, 2017.


UNITED STATES DISTRICT JUDGE